2008

State of Utah v. Brian Dale Larsen : Brief of Appellee

Utah Court of Appeals

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Case No. 20080519-CA

IN THE

UTAH COURT OF APPEALS

State of Utah,
Plaintiff/Appellee,

vs.

Brian Dale Larsen,
Defendant/Appellant.

Brief of Appellee

Appeal from an order of restitution following convictions for one count of joyriding with intent to temporarily deprive the owner thereof, a class A misdemeanor, in violation of Utah Code Ann. § 41-1a-1314 (West Supp. 2008), and one count of unlawful possession of burglary tools, a class B misdemeanor, in violation of Utah Code Ann. § 76-6-205 (West 2004), in the Third Judicial District Court of Utah, Salt Lake County, the Honorable William W. Barrett presiding.

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STATEMENT OF JURISDICTION

Defendant appeals from an order of restitution. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2008).

STATEMENT OF THE ISSUES

1. Whether the trial court abused its discretion in ordering that defendant pay restitution for damages to the victim's automobile stemming from Defendant's conversion and trespass to a chattel?

Standard of Review. "Trial courts are vested with wide latitude and discretion in sentencing, . . . and we will not disturb a trial court's restitution order unless it exceeds that prescribed by law or otherwise abused its discretion." *State v. Corbitt*, 2003 UT App 417, ¶ 6, 82 P.3d 211 (citations omitted). "'[T]he exercise of discretion in sentencing necessarily reflects the personal judgment of the court and the

appellate court can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court.'" *Id.* (quoting *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978)) (brackets in original).

STATUTES

The following statutes are attached at Addendum A:

UTAH CODE ANN. § 41-1a-1314 (West Supp. 2008);
UTAH CODE ANN. § 76-3-201 (West Supp. 2008);
UTAH CODE ANN. § 76-6-205 (West 2004);
UTAH CODE ANN. § 77-18-1 (West Supp. 2008);
UTAH CODE ANN. §§ 77-38a-101 (West 2004), -102, -302 (West Supp. 2008).

STATEMENT OF THE CASE

Defendant was charged with theft by receiving stolen property, unlawful possession of burglary tools, and failure to stop for a red light. R1-2. Defendant waived a preliminary hearing and was bound over. R23-24. He pled guilty to joyriding with intent to temporarily deprive owner, a class A misdemeanor, in violation of UTAH CODE ANN. § 41-1a-1314 (West Supp. 2008) (Count I), and unlawful possession of instrument for burglary or theft, a class B misdemeanor, in violation of UTAH CODE ANN. § 76-6-205 (West 2004) (Count II).[1] R25, 27. The State dismissed the charge of failure to stop for a red light. R25-26, 30. The court ordered

[1] *See State v. Carruth*, 947 P.2d 690, 691 (Utah App. 1997) (recognizing that "joyriding" is formally designated offense of "exercise [of] unauthorized control for extended time," under section 41-1a-1314) (brackets in original).

Adult Probation and Parole ("AP&P") to prepare a presentence investigation ("PSI") report. R25. The trial court sentenced Defendant to 365 days in jail on Count I and 180 days in jail on Count II, but suspended the sentence, placed Defendant on probation for thirty-six months, and left the determination of restitution open for forty-five days. R75-78.

The State moved that Defendant be ordered to pay restitution in the amount of $4,754.50, for impound and towing of the stolen vehicle ($282.00), mechanical repairs and labor ($1,412.50), parts ($1,765.00), detailing ($95.00). and damage to a fence and gate ($1,200.00). R46, 49-52, 79. The court initially granted the State's motion, but set aside its order after Defendant objected to all the claimed damage except for the impound and towing fees. R81, 89-92, 102. Following a hearing, the court ordered that Defendant pay restitution in the amount of $3,554.50 to cover the cost of impound and towing fees, plus all damage to the vehicle, but not that to the fence and gate. R109. At the same hearing, the court revoked Defendant's probation for multiple violations. R93-98, 110. Defendant timely appealed the restitution order. R112.

STATEMENT OF FACTS

On April 30, 2007, THG Auto Brokers ("THG") manager, Gordon Granger, reported that a 1998 Jeep Grand Cherokee was stolen from the car lot. R2.

On May 6, 2007, Officer Johnson of the Salt Lake City Police Department was on duty when he observed a car run a red light. R72:3. Officer Johnson stopped the car and found Defendant to be the driver. *Id.* When asked about the car, Defendant stated that it belonged to a friend and that he had borrowed it. *Id.* The officer checked the vehicle identification number and learned that it was the stolen Jeep. R3; 72:3. The officer arrested Defendant, although he denied knowing that the Jeep was stolen. R72:3. Inside the Jeep, officers found that the ignition switch had been removed, the steering column was damaged, and the Jeep's sound speakers had been removed from their proper locations. *Id.* They also found screwdrivers, wrenches, a hammer, and a pry bar, which appeared to have been used to dismantle parts of the Jeep. *Id.*

After Defendant pled guilty, the Department of Corrections provided the court with Mr. Granger's statement and receipts of damage to the Jeep and copies of photos of the damage. R42.59.

Defendant made the following admission to the AP&P investigator:

> I . . . got involved with the person that was not very good and . . . this other person *got me . . . going with him to still things that wher not ares and having the drive stolen cars for him* and fallow him places with thes cars and I know that I could get in trouble . . . [.] I still have done wrong I think every day how much that they could or may have lost for be doing this *it was not only ther car that I was tacking* it was ther life

> maby ther job and somthing they have worked for for a long time and for me to do that was wrong . . . .

R72:3 (emphasis added).

At the same hearing, the court heard argument concerning restitution in two separate cases in which Defendant had entered guilty pleas to charges involving damage to automobiles stolen on or about April 30, 2007, the day the Jeep was stolen. R122:1-9. In this case, number 071903635, Defendant argued that he could not be ordered to pay restitution in excess of $500—the amount distinguishing second-degree joyriding from class A joyriding, the offense to which he pled guilty. *Id.* at 1-4. He also argued that, because there was no evidence that he was "anywhere near that building" from which the car was stolen and because he was only found with the car a week after it was stolen, restitution should not be ordered for damages to the fence and gate surrounding the building or to the car. *Id.* at 4. Defendant did stipulate to pay restitution to cover the $282 fee for towing and impound of the car. *Id.* at 8.

The court ruled that Defendant was liable for damage to the car, but not to the fence and gate and ordered that he pay $3,554.50 in restitution. *Id.* at 6.

SUMMARY OF ARGUMENT

The sentencing court did not abuse its discretion in ordering Defendant to pay restitution for all damage to the victim's vehicle. The Crime Victims Restitution Act directs the court to order a defendant to pay restitution for all demonstrable economic injury that could be recovered in a civil action stemming from his criminal activity.

Here, by pleading guilty to joyriding, Defendant pled guilty to joyriding, admitting that he exercised unauthorized control over the motor vehicle of THG Auto Brokers with the intent to temporarily deprive. He also admitted that he stole THG's Jeep. By his plea and admission, he subjected himself to a civil action for conversion and trespass to a chattel. And because defendant does not dispute either that the stolen Jeep was damaged or the cost of repair, THG could readily have recovered that cost.

Last, Defendant's argument, that his restitution could not be ordered above $500, the amount setting the level of the joyriding offense, fails. The Act, not the statute defining the offense, governs when, how much, and under what circumstances restitution must be paid. Under the Act, the court is directed to order restitution necessary to compensate the victim for *all damages* that could be recovered in a *civil action* stemming from a defendant's criminal activity. Thus, any

amount setting the level of an offense is irrelevant to the determination of restitution.

ARGUMENT

I.

THE TRIAL COURT CORRECTLY ORDERED DEFENDANT TO PAY RESTITUTION FOR DAMAGE TO THE STOLEN CAR

Defendant argues that the trial court erred in ordering full restitution because "he did not admit responsibility, was not convicted [of criminal activities resulting in the claimed damages, and] did not agree to pay restitution." Aplt. Br. at 8, 10-18.[2] Alternatively, he argues, "[he] should not be held to answer for more than $500 in restitution because, if he admitted responsibility for the vehicle damage at all, he did not admit responsibility for more than the $500 ceiling set by the statute he pleaded guilty to—Joyriding, a class A misdemeanor. Aplt. Br. at 9, 18-20. Contrary to his first argument, Defendant *did* admit criminal conduct giving rise to pecuniary damages recoverable in civil actions for conversion and trespass to a chattel. Defendant's second argument fails because the Crime Victims Restitution Act expressly authorizes the trial court to order "complete restitution"—"restitution necessary to compensate the victim for *all* losses caused by the defendant"

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[2] On appeal, as in the trial court, Defendant does not challenge the restitution order as to the impound and towing fees. Aplt. Br. at 18.

stemming from the defendant's admitted criminal activity. This statutory mandate applies regardless of the offenses to which the defendant pled guilty. UTAH CODE ANN. § 77-38a-302 (2)(a), (5)(a, -b(i)) (West Supp. 2008) (emphasis added).

A. The Crime Victims Restitution Act provides that victims be compensated for all losses caused by criminal activity.

"When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter . . . ." UTAH CODE ANN. § 77-38a-302(1) (West Supp. 2008). *See* UTAH CODE ANN. § 77-38a-101 (West Supp. 2008) (identifying chapter 38a of the Code as the "Crime Victims Restitution Act") ("the Act").

"'Criminal activities' means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct." UTAH CODE ANN. § 77-38a-102(2) (West Supp. 2008).

"'Pecuniary damages' means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities . . . ." UTAH CODE ANN. § 77-38a-102(6) (West Supp. 2008).

"In determining restitution, the court shall determine complete restitution . . . ." UTAH CODE ANN. § 77-38a-302(2) (West Supp. 2008). "'Complete restitution' means restitution necessary to compensate a victim for all losses caused by the defendant." *Id.* at (2)(a).

B. Defendant's admitted criminal conduct gave rise to civil actions for conversion and trespass to a chattel.

Based on Defendant's pleading guilty to joyriding and his admitted criminal conduct, the owner of the stolen vehicle could have brought a civil action for conversion against Defendant. "A conversion is an act of willful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession." *Allred v. Hinkley*, 328 P.2d 726, 728 (Utah 1958). *See also* 1 RESTATEMENT (SECOND) OF TORTS § 222A (1965) ("Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.")[3] "A conversion may be committed by

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[3] In further explaining the nature of conversion, the Restatement states:

(2) In determining the seriousness of the interference and the justice of requiring the actor to pay the full value, the following factors are important:

(a) the extent and duration of the actor's exercise of dominion or control;

intentionally (a) dispossessing another of a chattel . . . ; [or] (b) destroying or altering a chattel. . . ." *Id.* at § 223.

Alternatively, Defendant would have been subject to a civil action for trespass to a chattel: "A trespass to a chattel may be committed by intentionally (a) dispossessing another of a chattel, or (b) using or intermeddling with a chattel in the possession of another." 1 Restatement (Second) of Torts § 217 (1965). *See Fenn v. MLeads Enterprises, Inc.*, 2004 UT App 412, ¶ 29 n.9, 103 P.3d 156 (recognizing availability of a common law trespass to chattel claim and requirement that "a successful claim would require [plaintiff] to prove actual damages") (citations omitted), *rev'd on other grounds*, 2006 UT 8, 137 P.3d 706.

(b) the actor's intent to assert a right in fact inconsistent with the other's right of control;

(c) the actor's good faith;

(d) the extent and duration of the resulting interference with the other's right of control;

(e) the harm done to the chattel;

(f) the inconvenience and expense caused to the other.

Id. at § 222A(2).

Here, it is undisputed that on April 30, 2007, a 1998 Jeep Grand Cherokee was stolen from THG's car lot. R2. Defendant, in pleading guilty to joyriding and possession of burglary tools, admitted that "[o]n May 6, 2007, . . . [he] exercised unauthorized control over the motor vehicle of THG Auto Brokers with the intent to temporarily deprive," and that "[h]e also possessed tools that under the circumstances manifested an intent to use to commit theft."

Defendant also admitted to the AP&P investigator that he went with another person "*to still things that wher not ares,*" that he "*drive stolen cars* [for the other person], and that he thought "every day how much that [the victims] could or may have lost for be doing this *it was not only ther car that I was tacking* it was ther life maby ther job and somthing they have worked for for a long time and for me to do that was wrong . . . ." R72:3 (emphasis added).

In short, Defendant admitted that he stole the vehicle on April 30 and was in possession of it with intent to deprive on May 6, when he was stopped and arrested. Further, apart from Defendant's self-serving statement, no evidence supports that anyone else stole the vehicle or interrupted his exclusive possession of it during the time the owner was deprived of it. On these facts, Defendant was subject to a civil action for conversion and trespass to a chattel. *See Corbitt*, 2003 UT App 417, ¶¶ 4, 9 ("'[T]he record in the case before us'"—Corbitt pleaded guilty to possession of a

vehicle he knew was stolen—"'reflects that the State presented evidence which would support a civil conversion action against [Corbitt]'") (quoting *State v. McBride*, 940 P.2d 539, 543 (Utah App. 1997)) (brackets in original); *Fenn*, 2004 UT App 412, ¶ 29 n.9.

C. THG Auto Brokers was entitled to receive pecuniary damages consisting of the damage to its stolen Jeep stemming from Defendant's conversion and trespass to a chattel.

As stated, "[w]hen a person is convicted of criminal activity that has resulted in pecuniary damages, . . . the court shall order that the defendant make restitution to victims of crime as provided in this chapter . . . ." UTAH CODE ANN. § 77-38a-302(1) (West Supp. 2008). "'Pecuniary damages' means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities . . . ." UTAH CODE ANN. § 77-38a-102(6) (West Supp. 2008). "In determining restitution, the court shall determine complete restitution . . . ." UTAH CODE ANN. § 77-38a-302(2) (West Supp. 2008). "'Complete restitution' means restitution necessary to compensate a victim for all losses caused by the defendant." *Id.* at (2)(a). "For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court . . . ." *Id.* at (5)(a). "In determining the monetary sum and other conditions for complete

restitution, the court shall consider all relevant facts, including: (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense[.]" *Id.* at (5)(b)(i).

"'[T]he damages in an action for conversion are measured by the sum of money necessary to compensate the plaintiff for all actual losses or injuries sustained as a natural and proximate result of the defendant's wrong.'" *Corbitt*, 2003 UT App 417, ¶ 9 (quoting *Jenkins v. Equipment Ctr., Inc.*, 869 P.2d 1000, 1004 (Utah App. 1994)) (bracket in original). "'[T]he primary objective in rendering an award of damages for conversion is to award the injured party full compensation for actual losses.'" *Id.* (quoting *Jenkins*, 869 P.2d at 1004) (bracket in original).

Similarly, the measure of damage in a successful action for trespass on a chattel is actual, proven damages. *Fenn*, 2004 UT App 412, ¶ 29 n.9. *See also* 1 Restatement (Second) of Torts § 219(a) (1965) ("One who commits a trespass to a chattel is subject to liability . . . if the chattel is impaired as to its condition, quality, or value.")

Given the foregoing undisputed facts and Defendant's admissions, the trial court did not abuse its discretion in ordering Defendant to pay restitution – THG 's "full pecuniary damages," consisting of the cost of repairs to its Jeep stemming from

Defendant's criminal conduct. THG certainly could have recovered those damages in civil actions for conversion and trespass to a chattel.

Here, Defendant does not dispute that THG's Jeep had damage to the steering column and sound system. Nor does Defendant dispute the dollar amount—$3,554.50—necessary to repair the damage. Rather, Defendant asserts that his admission to having stolen cars with another person—he neglects to mention that he also admitted to "tacking" cars—"does not 'firmly establish' that [he] committed the original theft." Aplt. Br. at 18 (citing *State v. Mast*, 2001 UT App 402, ¶ 18, 40 P.3d 1143). Alternatively, he argues, "if [his admission] broadens [Defendant's] admission at all, it still requires impermissible 'inferences' to deduce that [he] admitted responsibility for the vehicle damage." *Id.* (citing *State v. Watson*, 1999 UT App 273, ¶ 5, 987 P.2d 1289). These arguments defy common sense and misconstrue the law.

Defendant's admission that he stole cars "firmly established" that he stole the Jeep at issue in this case. Defendant made his admission in a handwritten statement to an AP&P investigator whom he knew was charged with preparing a PSI report in this case, which involved the theft and damage to THG's Jeep and no other. R72:1, 3; 130:6-7 (colloquy at change of plea hearing in which trial court ordered PSI report and demanded of Defendant that he not "foul up" by failing to meet with AP&P).

Further, Defendant misapplies *Watson*'s reference to "impermissible inferences" to this case. Watson was charged with criminal homicide and attempted criminal homicide because she allegedly drove her codefendants to and from the crime scene. *Watson*, 1999 UT App 273, ¶ 2. She was also charged with obstruction of justice because she sold the car used in the crime. *Id.* She pleaded guilty to attempted obstruction of justice. *Id.* Her plea notwithstanding, she was ordered to repay money given to the victims' family from the Victim's Restitution Fund. *Id.* at ¶ 1. The trial court reasoned that, based only on Watson's having heard the shots and her having run to the car and driven it away, Watson had a sufficiently guilty state of mind to justify ordering restitution. *Id.* at ¶ 4. This Court faulted the trial court because it "made inferences about Watson's state of mind based on the evidence before it." *Id.* at ¶ 5. The court of appeals also focused on Watson's plea, which was not to murder or attempted murder, but to obstruction of justice. These admissions, this Court implicitly suggested, could hardly establish "a sufficient nexus to hold her accountable to the victim's family for restitution." *Id.*

This case is substantially different from *Watson*. Here, unlike Watson, Defendant pled guilty to an offense—joyridin--which, at the very least, made him subject to damages related to depriving the owner of the Jeep through his conversion and trespass to a chattel. More importantly, Defendant's admission to stealing the Jeep,

coupled with his arrest for being in possession of the Jeep, all in the absence of any evidence that anyone else had stolen or possessed the Jeep, established at least a prima facie case that he, and he alone, had damaged the Jeep. *Cf. State v. Manger*, 7 Utah 2d 1, 3, 315 P.2d 976, 977 (1957) (recognizing "that possession of recently stolen property is sufficient to sustain a conviction of burglary if such possession is not too remote in point of time from the crime and if such possession is personal and exclusive and is not satisfactorily explained or there is other incriminating conduct or circumstances") (citing *State v. Thomas*, 121 Utah 639, 244 P.2d 653 (1952)). And unlike *Watson*, the undisputed, unrebutted evidence in this case—Defendant's belated "confession"—established an inference sufficient to support a nexus between Defendant's actions and the damage to the Jeep. Here, that evidence was sufficient to convict Defendant of theft beyond a reasonable doubt by proof that he, and he alone, stole and exclusively possessed the Jeep, rendering him solely liable for the damage to the vehicle.

Finally, in arguing that he did not admit responsibility for damage to the Jeep, Defendant argues that "at the sentencing hearing, [he] did not speak to the trial court or make any admissions at all." Aplt. Br. at 16. *See Watson*, 1999 UT App 273, ¶¶ 4-5 (noting that in considering "criminal activities" for the purpose of determining restitution, the sentencing statute, UTAH CODE ANN. § 76-3-201 (1)(b)

(West Supp. 2008), "does not ask the trial court to analyze a defendant's state of mind, but rather asks it to focus on admissions made to the sentencing court").

Contrary to his suggestion, Defendant's admission to the AP&P investigator *was* an admission made to the sentencing court. As noted, Defendant made his admission in a handwritten statement to an AP&P investigator whom he knew was charged with preparing a PSI report, which the trial court specifically requested in Defendant's presence at the change of plea hearing. R72:1, 3; 130:5-7. Further, Defendant's lengthy juvenile record, *see* R72:4-5, plus a comprehensive psychological assessment of Defendant—"Short-Term Observation Assessment"—prepared upon the juvenile court's order in a prior matter on April 11, 2005, *see* R24, make clear that Defendant would have been aware that statements made to investigators would be presented to the sentencing court. And Defendant has not challenged the accuracy of the PSI report. *See* UTAH CODE ANN. § 77-18-1 (6)(b) (West Supp. 2008) ("If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.")

More importantly, whether Defendant admitted responsibility for *damage* to the Jeep is irrelevant. The Act requires only that a defendant admit his *criminal activity*—here, his exclusive possession with intent to deprive. *See* UTAH CODE ANN.

§ 77-38a-302(1) (West Supp. 2008) ("When a person is convicted of criminal activity that has resulted in pecuniary damages, . . . , the court shall order that the defendant make restitution to victims of crime as provided in this chapter . . . .") *See State v. Hight*, 2008 UT App 118, ¶¶ 4-5, 182 P 3d 922 (recognizing that it is guilt for the underlying offense which must be "firmly established" under *Watson*, not responsibility for any particular damage).

In sum, the record amply shows that, based on Defendant's unrebutted admission to stealing THG's Jeep and possessing it with intent to deprive the owner in circumstances supporting his exclusive possession of the Jeep, the trial court did not abuse its discretion in ordering Defendant to pay restitution for damage to the Jeep.

D. Because the Act specifically provides that a trial court award full restitution for all losses suffered by the victim from a defendant's admitted criminal activity, it is irrelevant that Defendant pled guilty to an offense partly defined by a limited level of damage.

Defendant argues that, at the very most, the court was not authorized to order restitution in excess of $500 because he pled guilty only to joyriding, a class A misdemeanor, which sets the ceiling for that level of offense at $500. Aplt. Br. at 18-20.

Defendant's argument fails because the Act, not the statute defining the offense, governs when, how much, and under what circumstances restitution must be paid. As explained, under the Act a sentencing court *shall* order complete restitution based on pecuniary damages – those which a victim could recover in a civil action. *See* UTAH CODE ANN. §§ 77-38a-102(6), -302(1) (West Supp. 2008). The Act does not tie the amount of restitution to any amount in a statute setting the level of offense. As explained, the victim in this case could have recovered the entire amount for damage to its Jeep in a civil action for conversion or trespass to a chattel. THG would not be limited by the joyriding statute.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted May 27, 2009.

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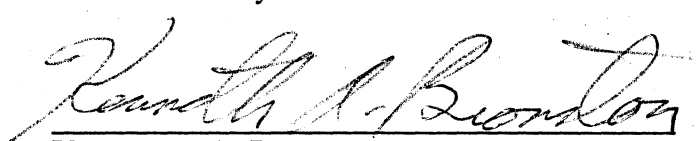

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CERTIFICATE OF SERVICE

I certify that on May 6, 2009, two copies of the foregoing brief were

☒ mailed ☐ hand-delivered to:

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A digital copy of the brief was also included: ☒ Yes ☐ No

Kenneth A. Loveless

Addendum A

§ 41-1a-1314. Unauthorized control for extended time

(1) Except as provided in Subsection (3), it is a class A misdemeanor for a person to exercise unauthorized control over a motor vehicle that is not his own, without the consent of the owner or lawful custodian, and with the intent to temporarily deprive the owner or lawful custodian of possession of the motor vehicle.

(2) The consent of the owner or legal custodian of a motor vehicle to its control by the actor is not in any case presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the motor vehicle by the same or a different person.

(3) Violation of this section is a third degree felony if:

(a) the person does not return the motor vehicle to the owner or lawful custodian within 24 hours after the exercise of unlawful control; or

(b) regardless of the mental state or conduct of the person committing the offense:

(i) the motor vehicle is damaged in an amount of $500 or more;

(ii) the motor vehicle is used to commit a felony; or

(iii) the motor vehicle is damaged in any amount to facilitate entry into it or its operation.

(4) It is not a defense to Subsection (3)(a) that someone other than the person, or an agent of the person, returned the motor vehicle within 24 hours.

(5) A violation of this section is a lesser included offense of theft under Section 76-6-404, when the theft is of an operable motor vehicle under Subsection 76-6-412(1)(a)(ii).

Laws 1992, c. 1, § 171; Laws 1997, c. 100, § 1, eff. May 5, 1997; Laws 2001, c. 48, § 1, eff. April 30, 2001; Laws 2005, c. 71, § 24, eff. May 2, 2005.

§ 76-3-201. Definitions--Sentences or combination of sentences allowed-- Civil penalties--Hearing

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e)(i) "Victim" means any person who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3)(a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4)(a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(5)(a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c)(i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) $75 for up to 100 miles a defendant is transported;

(B) $125 for 100 up to 200 miles a defendant is transported; and

(C) $250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6)(a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the county for the cost of incarceration in the county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and

(ii)(A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

(b)(i) The costs of incarceration under Subsection (6)(a) are the amount determined by the county correctional facility, but may not exceed the daily inmate incarceration costs and medical and transportation costs for the county correctional facility.

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall

consider the criteria under Subsections 77-38a-302 (5)(c)(i) through (iv) and shall enter the reason for its order on the record.

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

Laws 1973, c. 196, § 76-3-201; Laws 1979, c. 69, § 1; Laws 1981, c. 59, § 1; Laws 1983, c. 85, § 1; Laws 1983, c. 88, § 3; Laws 1984, c. 18, § 1; Laws 1986, c. 156, § 1; Laws 1987, c. 107, § 1; Laws 1990, c. 81, § 1; Laws 1992, c. 142, § 1; Laws 1993, c. 17, § 1; Laws 1994, c. 13, § 19; Laws 1995, c. 111, § 1, eff. May 1, 1995; Laws 1995, c. 117, § 1, eff. May 1, 1995; Laws 1995, c. 301, § 1, eff. May 1, 1995; Laws 1995, c. 337, § 1, eff. May 1, 1995; Laws 1995, 1st Sp.Sess., c. 10, § 1, eff. April 29, 1996; Laws 1996, c. 40, § 1, eff. April 29, 1996; Laws 1996, c. 79, § 98, eff. April 29, 1996; Laws 1996, c. 241, §§ 2, 3, eff. April 29, 1996; Laws 1998, c. 149, § 1, eff. May 4, 1998; Laws 1999, c. 270, § 15, eff. May 3, 1999; Laws 2001, c. 209, § 1, eff. April 30, 2001; Laws 2002, c. 35, § 4, eff. May 6, 2002; Laws 2003, c. 280, § 1, eff. May 5, 2003; Laws 2006, c. 208, § 1, eff. May 1, 2006; Laws 2007, c. 154, § 1, eff. April 30, 2007; Laws 2007, c. 339, § 3, eff. April 30, 2007; Laws 2007, c. 353, § 9, eff. April 30, 2007; Laws 2008, c. 151, § 1, eff. May 5, 2008.

§ 76-6-205. Manufacture or possession of instrument for burglary or theft

Any person who manufactures or possesses any instrument, tool, device, article, or other thing adapted, designed, or commonly used in advancing or facilitating the commission of any offense under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of a burglary or theft is guilty of a class B misdemeanor.

Laws 1973, c. 196, § 76-6-205.

§ 77-18-1. Suspension of sentence--Pleas held in abeyance--Probation-- Supervision--Presentence investigation--Standards--Confidentiality--Terms and conditions--Termination, revocation, modification, or extension--Hearings-- Electronic monitoring

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2)(a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b)(i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3)(a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5)(a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.

(c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(d) The presentence investigation report shall include:

(i) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1; and

(ii) recommendations for treatment of the offender.

(e) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6)(a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support the defendant is legally liable;

(iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10)(a)(i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii)(A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b)(i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11)(a)(i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12)(a)(i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b)(i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c)(i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if the defendant is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d)(i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e)(i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) The court may order the defendant to commit himself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G- 2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15)(a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76- 3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16)(a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Laws 1980, c. 15, § 2; Laws 1981, c. 59, § 2; Laws 1982, c. 9, § 1; Laws 1983, c. 47, § 1; Laws 1983, c. 68, § 1; Laws 1983, c. 85, § 2; Laws 1984, c. 20, § 1; Laws 1985, c. 212, § 17; Laws 1985, c. 229, § 1; Laws 1987, c. 114, § 1; Laws 1989, c. 226, § 1; Laws 1990, c. 134, § 2; Laws 1991, c. 66, § 5; Laws 1991, c. 206, § 6; Laws 1992, c. 14, § 3; Laws 1993, c. 82, § 7; Laws 1993, c. 220, § 3; Laws 1994, c. 13, § 24; Laws 1994, c. 198, § 1; Laws 1994, c. 230, § 1; Laws 1995, c. 20, § 146, eff. May 1, 1995; Laws 1995, c. 117, § 2, eff. May 1, 1995; Laws 1995, c. 184, § 1, eff. May 1, 1995; Laws 1995, c. 301, § 3, eff. May 1, 1995; Laws 1995, c. 337, § 11, eff. May 1, 1995; Laws 1995, c. 352, § 6, eff. May 1, 1995; Laws 1996, c. 79, § 103, eff. April 29, 1996; Laws 1997, c. 390, § 2, eff. May 5, 1997; Laws 1998, c. 94, § 10, eff. May 4, 1998; Laws 1999, c. 279, § 8, eff. May 3, 1999; Laws 1999, c. 287, § 7, eff. May 3, 1999; Laws 2001, c. 137, § 1, eff. April 30, 2001; Laws 2002, c. 35, § 7, eff. May 6, 2002; Laws 2002, 5th Sp.Sess., c. 8, § 137, eff. Sept. 8, 2002; Laws 2003, c. 290, § 3, eff. May 5, 2003; Laws 2005, 1st Sp.Sess., c. 14, § 3, eff. July 1, 2005; Laws 2007, c. 218, § 3, eff. July 1, 2007; Laws 2008, c. 3, § 252, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2193, eff. May 5, 2008.

§ 77-38a-101. Title

This chapter is known as the "Crime Victims Restitution Act."

Laws 2001, c. 137, § 2, eff. April 30, 2001.

§ 77-38a-102. Definitions

As used in this chapter:

(1) "Conviction" includes a:

(a) judgment of guilt;

(b) a plea of guilty; or

(c) a plea of no contest.

(2) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) "Department" means the Department of Corrections.

(4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

(7) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(9) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(10) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12)(a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(13) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14)(a) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

Laws 2001, c. 137, § 3, eff. April 30, 2001; Laws 2003, c. 278, § 2, eff. May 5, 2003; Laws 2005, c. 96, § 3, eff. May 2, 2005.
U.C.A. 1953 § 77-38a-102, UT ST § 77-38a-102

§ 77-38a-302. Restitution criteria

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5)(a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;

(v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsections (5)(a) and (b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines may make restitution inappropriate.

(d)(i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Laws 2001, c. 137, § 8, eff. April 30, 2001; Laws 2002, c. 35, § 13, eff. May 6, 2002; Laws 2002, c. 185, § 51, eff. May 6, 2002; Laws 2003, c. 285, § 1, eff. May 5, 2003; Laws 2005, c. 96, § 5, eff. May 2, 2005.
U.C.A. 1953 § 77-38a-302, UT ST § 77-38a-302